



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-6592

WILLIAM M. BENNET
First District, Klamath
BRAD SHERMAN
Second District, Los Angeles
ERNEST J. DRONENBURG, JR.
Third District, San Diego
MATTHEW K. FONG
Fourth District, Los Angeles
GRAY DAVIS
Controller, Sacramento
CINDY RALPH
Executive Director

August 5, 1991

Honorable Robert Shellenberger
San Joaquin County Assessor
24 S. Hunter Street
Stockton, CA 95202-3273
Attn: Ms. Debra S. Garretson
Assistant Chief of Valuation

Re: Change in Ownership -

Dear Ms. Garretson:

This is in response to your letter of April 29, 1991, to Mr. Les Sorensen, Chief, Legal Division, in which you request our analysis of the change in ownership implication of the following facts:

D, the surviving spouse of H, died on April 17, 1987. The assessor's office denied a parent/child exclusion claim because in its view, D did not freely transfer her interest in the property to her children. The assessor's office contended that D's children received their interest from their grandfather through his testamentary trust ("Trust").

Under the Trust, H and D were the present income beneficiaries and their children had remainder interests in the Trust property. H predeceased D and upon D's death, the children's remainder interest became possessory.

Mr. Elliott, the attorney for the Estate, now contends that the grandchildren's interest in the property vested in 1953 when their grandfather died and they began receiving net income from the trust of up to \$3,000 per year. At the time of creation, the Trust included assets such as real property, interests in grape and wine

Honorable Robert Shellenburger

August 5, 1991

pools, an interest in the Association, and U.S. Treasury Bonds.

Your position is that the property has undergone a change in ownership due to termination of the Trust and distribution to the beneficiaries (grandchildren).

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states that:

A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Property Tax Rule 462(i) sets forth the application of this principle to trusts and states in pertinent part:

(3) Termination. Except as is otherwise provided in subdivision (4), the termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.

(4) Exceptions. A transfer resulting from the termination of a trust is not a change in ownership if:

(A) Prior Reappraisal. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest (either use of or income from the property) causing a reappraisal when the trust was created or when it became irrevocable; provided, however, another change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary.

(B) Revocable Trusts. Termination results from the trustor-transferor's exercise of the power of revocation and the property is transferred by the trustee back to the trustor-transferor.

(C) Trustor Reversion Trusts. The trust term did not exceed 12 years in duration and, on termination, the property reverts to the trustor-transferor.

(D) Interspousal Trusts. The exemption afforded interspousal transfers is applicable.

August 5, 1991

(E) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same proportional interests in the property as they held before the termination of the trust.

(F) Other Trusts. Termination results in the transfer from one trust to another and meets the requirements of (A), (B), (C), (D), or (E) of subdivision (2).

In this matter, there has been no demonstration that the children of H and D actually received a present beneficial ownership interest in real property during their parents' lives. And the net income from the trust of up to \$3,000 per year given to the children could easily have been provided by non-real property assets. Therefore, in our view, the children never acquired a present beneficial ownership interest in the real property in their grandfather's trust.

As indicated, under the Trust, H and D were the present income beneficiaries. When D died in 1987, a change in ownership occurred because the two present beneficiaries were then deceased. The two grandchildren of H held remainder interests which, at their mother's death, became possessory. (See Property Tax Rule 462(i)(4)(A)). Therefore, a change in ownership of the real property occurred at the death of D in 1987. Furthermore, none of the exceptions stated in Property Tax Rule 462(i)(4) are applicable to exclude this transfer from being a change in ownership.

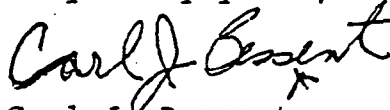
Mr. Elliott also had several discussions with your office about the applicability of the Proposition 58 parent/child exclusion. In order to exclude a transfer of real property from change in ownership provisions under the parent/child exclusion, the transfer must be from a parent to a child (Section 63.1). In the situation described here, the real property beneficially owned in trust by H and D was subsequently transferred to the grandchildren of the transferor, . Since the grandfather made the original transfer of property to H and D, in trust, and thereafter, to their children, the transfer to the grandchildren was a transfer from grandparent to grandchildren, not from parents to children. As such, the transfer does not fit within the parent/child exclusion and therefore cannot be excluded from change in ownership provisions thereby.

Honorable Robert Shellenburger

August 5, 1991

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Carl J. Bessent
Tax Counsel

CJB:ta
3450D

cc: Mr. John W. Hagerty
Mr. Verne Walton